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JUN 05 2006

OFFICE OF PETITIONS

In re Application of
Lorraine, et al.
Application No. 10/747,739
Filed: 29 December, 2003
Attorney Docket No. RD25422-1

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ON PETITION

This is a decision on one of two petitions filed on 22 May, 2006—this under 37 C.F.R. §1.47(a).

For the reasons set forth below, the petition under 37 C.F.R. §1.47(a) is **GRANTED**.

BACKGROUND

The record indicates:

- the instant application was filed on 29 December, 2003, without, *inter alia*, a fully executed oath/declaration;
- on 12 April, 2004, the Office mailed a Notice of Missing Parts indicating, *inter alia*, that a fully executed oath/declaration was required within two months;
- the 6 July, 2004, original petition—with, *inter alia*, a statement by Petitioner Paul J. DiConza (Reg. No. 48,418), along with an oath/declaration containing the signature of named co-inventor Lorraine (for himself and on behalf of) but without the signature of named non-signing co-inventor Ronald Alan Kline (Mr. Kline), a narration the statement of, and an averment that the oath or declaration was presented to Mr. Kline and references attached documents—however, while the attached assignment references (in hand note) a

transmittal letter, the transmittal letter is not attached to evidence/demonstrate that the entire application (description, claims, abstract, drawings) was presented to the non-signing inventor Mr. Kline along with the oath or declaration—was dismissed on 5 August, 2005, for that deficiency (in advance of the mailing of the decision, a call was placed to Counsel on 4 August, 2005, and a copy of the letter was to be provided when the petition was resubmitted;

- Petitioner received in the decision of 5 August, 2005, a two- (2-) month period within which to reply and was reminded that “[e]xtensions of time under 37 C.F.R. §1.136(a) are permitted,” however, after the expiration of the reply period on 5 October, 2005, the maximum extension of five (5) months would have expired on 5 March, 2006, and the record is clear that Petitioner’s Certificate of Mailing is set forth as “April 3, 2006”—thus the petition was dismissed on 17 April, 2006, because the instant application went abandoned after midnight 5 October, 2005;
- with the instant petition, Petitioner also submitted a companion petition seeking to revive the instant application under 37 C.F.R. §1.137(b)—because the instant petition is grantable, and so constitutes the required reply for the petition to revive, and the petition to revive (obviously is accompanied by the reply and) is accompanied as required by the fee and a statement of unintentional delay, has been granted and the instant application is pending and no longer abandoned.

This application and papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

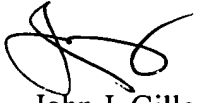
This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a).**

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is being released to OIPE for processing as necessary to reflect the instant decision before being released for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to read 'John J. Gillon, Jr.', with a stylized, cursive script.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions



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COMMUNICATION

Dear Ronald Alan Kline:

You are named as inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. §116 (United States Code), and 37 C.F.R. §1.47,¹ ¶a, Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding

¹ The regulations at 37 C.F.R. §1.47 provide:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in §1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

© The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

[47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000]

through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733.

Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or toll-free: (800) 972-6382 (outside the Washington D.C. area).

Telephone inquiries concerning this letter may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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